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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Justice Vijay Kumar Shrivastava

Writ Petition No. 3464 of 1999

Devraj Sankhla & Others

Versus

State of Madhya Pradesh (now State of Chhattisgarh) & Others

ORDER

Post for 29-01-2007

Sd/-
V.K. Shrivatava
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Justice Vijay Kumar Shrivastava

Writ Petition No. 3464 of 1999

Petitioners :

1. Devraj Sankhla S/o. Late Shri D.R. Sankhla, aged about 52 years, Proprietor – M/s Bambhirmal Kishorchand Sankhla, R/o. Kishanpara, Navapara (Razim), District – Raipur.
2. Narayandas Dammani, S/o. Shri G.D. Dammani, aged about 40 years, Proprietor - Dammani & Company, Navapara (Razim), District – Raipur.
3. Prakash Chand Bothra, S/o. Late Shri R.L. Bothra, aged about 50 years, Partner - Ganesh Rice Mills, Navapara (Razim), Raipur.
4. Amar Makhija, S/o. Shri M.L. Makhija, aged about 44 years, Proprietor - Shankhla Rice Mills, Navapara (Razim), Raipur.
5. Ramdas Goyal, S/o. Late Shri G.C. Goyal, aged about 60 years, Proprietor – Ujjawal Rice Mills, Navapara (Razim), District-Raipur.

Versus

Respondents :

1. State of Madhya Pradesh (now State of Chhattisgarh), Through: Secretary, Department Urban Administration & Development, Vallabh Bhavan, Bhopal.
2. The Municipal Council, Gobranavapara, Through: its Chief Municipal Officer, Gobranavapara, District- Raipur.
3. The Deputy Director, Urban Administration, Raipur.

Present :- Shri Ashish Shrivastava, counsel for the petitioners.

Shri N.K. Agrawal, Dy. Advocate General for the State/ respondents No.1 and 3.

Shri P.K. Bhaduri, counsel for respondent No.2.

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ORDER

(Delivered on 29-01-2007)

Respondent No.2 passed a resolution on 9-6-1999 whereby enhanced the rate of terminal tax on paddy at the rate of Rs.1.00 per quintal and rice at the rate of Rs.1.50 per quintal from 0.55 paisa and 0.80 paisa per quintal respectively and vide notification dated 24-6-1999 notified the same and made it applicable w.e.f. 1-7-1999. Respondent No.2 has also erected barriers for collection of terminal tax. Feeling aggrieved this writ petition.

2) For imposition of taxes and for enhancement thereof Municipal Councils are authorized in accordance with Sections 127 and 129 of the MP/CG Municipalities Act, 1961 (henceforth "the Act, 1961") subject to general or special order of the State Government. The State Government for regulating assessment and collection of terminal tax on the export of goods within the limits of Gobra Nawapara Municipality floated rules namely Gobra Nawapara Municipality Terminal Tax on Goods (Assessment and Collection) Rule, 1989 (henceforth "the Rules, 1989). State Government vide notification dated 12-4-1991 by issuing a separate notification specified terminal tax to be recovered by Municipal Council Gobra Nawapara. State Government also notified the names of commodities and rates of taxes thereby fixed rate of tax Rs.1.00 per quintal for paddy and Rs.1.50 per quintal for rice, wheat and all kinds of pulses. Subsequently vide notification dated 8-1-1992 State Government notified rules namely MP Municipalities Terminal Tax on Goods and Animals imported into or exported from the limit of Municipal Council (Assessment and Collection) Rules, 1991 (henceforth "the Rules, 1991). In accordance with Rule 3 of Rules, 1991 all rules and byelaws corresponding to Rules, 1991, in force immediately before the commencement of Rules, 1991 have been repealed. Neither the Rules,

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1989 carries any schedule nor the Rules, 1991 have any schedule affixing rate of terminal tax.

3) Vide notification dated 21-2-1997 State Government further launched rules namely Terminal Tax (Assessment and Collection) on the goods exported from Madhya Pradesh Municipal Limits Rules, 1996 (henceforth "the Rules, 1996"). Vide its Rule 9, Rules, 1991 has been repealed. Rules, 1996 also carries schedule bearing list of commodities and proposed rates of terminal tax. Maximum rates described in the schedule for all sorts of food grains, pulses, oil seeds, sugar, gur (Jaggery) was proposed 0.10% on the basis of price and the same rate has also been prescribed for all other sorts of agricultural products, bhusi, chuni and food grains for cattle feed. Earlier to issuance of Rules, 1996 State Government vide circular dated 15-12-1995 issued directions and fixed terminal tax. According to that instruction on all sorts of food grains, pulses, oil seeds, sugar, gur (Jaggery) rate was fixed 2.10% whereas for all other sorts of agricultural products, bhusi, chuni and food grains for cattle feed the rate was 0.10% on the basis of price.

4) Respondent No.2 vide resolution dated 9-6-1999 enhanced the rates and in order to realize the taxes has erected barriers. On representation made by the petitioners, higher authorities from time to time issued directions for removing barriers and not to realizing the taxes at barriers. One of the last directions was dated 7-7-1999, but all of a sudden, State recalled its earlier direction dated 7-7-1999 by letter dated 9-7-1999.

5) Petitioners have challenged the enhancement of rates by respondent No.2 vide resolution dated 9-6-1999 and installation of barrier for collection of export tax at the barrier point, *inter alia*, on the ground that the terminal tax increased is in violation of Section 129 of the Act, 1961

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and the Rules, 1996. Schedule is defined in Rule 2 (6) of the Rules, 1996 and the schedule also prescribes maximum limits of tax imposable by the Municipalities and Municipalities have no right to override the rate prescribed by the State under rules and enhance the terminal tax exceeding the limit. By virtue of Rule 4 of the Rules, 1996 procedure has been laid down for collection of terminal tax and according to that rules installation of barrier and recovery of export tax at barrier point as earlier was prevalent has been abolished.

6) Respondent No.2 contested the claim of the petitioners, *inter alia*, on the ground that in exercise of power conferred by sub-sections (5) and (7) of Section 129 of the Act, 1961, the State Government sanctioned the proposal of the Municipal Council, Gobra Nawapara for imposition of terminal tax and approved rate of tax for paddy Rs.1.00 per quintal and for rice Rs.1.50 per quintal. State Government also framed Rules, 1991, which came into existence from 21-7-1991, but the rules did not prescribe any rate of terminal tax and only provided procedure for assessment and collection of terminal tax, therefore, Municipalities were permitted to impose terminal tax in accordance with the provisions of Sections 127 and 129 of the Act, 1961. State Government vide MP Act No.17 of 1994 made extensive amendments in the original Act, thereby made radical changes in the manner and procedure of imposition of tax, pursuant to that issued directions to all the Municipalities to impose terminal tax with a rider that such imposition should not effect the price of commodity by more than ½% (half %) and thereafter vide circular dated 15-12-1995 State Government issued guidelines along with rate of tax to be levied in accordance with schedule, to all the Municipalities, thereafter Rules 1996 came into force wherein rates in respect of paddy and rice for terminal tax have been made leviable up to 0.10% on the basis of price. Thereafter the Act, 1961 was again fasten with extensive amendments. State Government vide

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letter Annexure-R2(I) directed all the Municipalities to impose terminal tax in exercise of power as conferred by Section 127 (6) of the Act, 1961 and if they choose to do so, the State Government had no objection for the same.

7) During the course of arguments, learned counsel for the petitioners contended that respondent No.2 has no jurisdiction to impose terminal tax more than the limit prescribed in accordance with schedule appended to the Rules, 1996 whereas respondent No.2 violating the rate fixed by the State, has enhanced tax leviable on paddy and rice by Rs.1.00 and Rs.1.50 per quintal respectively. Learned counsel for respondent No.2 did not assail the said enhancement, but contended that in accordance with Section 129 of the Act, 1961 the Municipality has jurisdiction to enhance the rate. State had no objection which vide Annexure-R2(I) they communicated. The Rules, 1996 is of general applicability, which does not restrict respondent No.2 to impose or enhance the terminal tax.

8) In accordance with Section 127 of the Act, 1961 the Municipalities are authorized to impose terminal tax on goods or animals exported from the limits of the Council, subject to any general or special order which the State Government may make in this behalf. State Government vide Rules, 1996 has notified the goods as well as prescribed general conditions. In Rules, 1996 Schedule has been defined as below :

> "'*Schedule*' means the rate determined, subject to the maximum rate described in the schedule appended to these rules, under Section 133 of the Madhya Pradesh Municipal Corporation Act, 1956 or Section 129 of the Madhya Pradesh Municipalities Act, 1961, as the case may be."

According to schedule up to 0.10% on the basis of price, terminal tax is leviable on all sorts of food grains, pulses, oil seeds, sugar, gur

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(Jaggery) and 0.10% on the basis of price on all other agricultural products, bhusi, chuni and food grains for cattle feed.

9) Section 129 of the Act, 1961 relevant in this case, wherein provisions for increase of rates has been enshrined, which is reproduced below :

> **"129. Imposition of Taxes and fees.**-(1) The Council may, by a resolution, at the time of final adoption of the budget estimates for the next financial year, subject to the provisions of this Act and subject to such limitations and conditions, as may be prescribed by the State Government in this behalf
>
> (a) impose any of the taxes or fees specified in this Act; or
>
> (b) increase the rates of taxes or fees already imposed.
>
> (2) The resolution as referred to in sub-section (1) shall contain-
>
> (a) in case of imposition of any tax or fee, the provisions under which such tax or fee is being imposed, class of persons or description of property to be taxed, the amount or rate of tax or fee being imposed, system of assessment and collection to be adopted and the date from which imposition of such tax or fee shall take effect;
>
> (b) in case of increase of rate of any tax or fee, the prevailing rate of such tax or fee, the proposed increased rate of such tax or fee and the date from which increase of rate or such tax or fee shall take effect.
>
> (3) The resolution, as passed shall be conclusive evidence of the imposition of a new tax or fee, or increase of rate of any tax or fee, as the case may be:
>
> Provided that if Council decides to have supplementary taxation during the financial year, it may do so from such date as the Council may resolve, subject to the provisions of this Act and subject to such limitations and conditions, as may be prescribed by the State Government in this behalf.
>
> (4) Nothing contained in this section shall apply to tax mentioned in clause (i) of sub-section (1) of Section 127 which shall be charged and levied in accordance with Section 127-A."

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10) Letter {Annexure-R2(I)} relied on by respondent No.2, is reproduced below :

"मध्यप्रदेश शासन
स्थानीय शासन विभाग
मंत्रालय

कमांक एफ–6/9/97/10–3/97. भोपाल, दिनांक 7–11–97

प्रति,

1– समस्त
आयुक्त,
नगर पालिक निगम,म0प्र0

2– समस्त,
मुख्य नगरपालिका अधिकारी,
नगरपालिका परिषद/नगर पंचायत,म0प्र0

विषयः– निर्यातकर आरोपित किए जाने के संबंध में।

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प्रदेश में दिनांक 1–5–97 से आरोपित स्थानीय निकाय कर की व्यापकता को देखते हुए निर्यातकर को निष्प्रभावी करने के परिप्रेक्ष्य में विभाग के परिपत्र कमांक एफ 6/1/10 3/95, दिनांक 2 5 97 द्वारा ज्ञापन कमांक एफ–6/1/18–3/95, दिनांक 15–12–95 को निरस्त किया गया था। इस संबंध में नगरीय निकायों द्वारा वांछित मार्गदर्शन के अनुसार वर्तमान में यह आवश्यक है कि निर्यात कर के संबंध में स्पष्ट निर्देश जारी किए जावें।

शासन के द्वारा यह स्पष्ट किया जा चुका है कि अब स्थानीय निकाय कर नहीं लगेगा तथा पूर्ववत प्रवेश कर संशोधित स्वरूप में लागू किया जावेगा। उक्त स्थिति एवं मध्यप्रदेश नगर पालिक निगम अधिनियम 1956 की धारा 132(6) (ढ) तथा मध्यप्रदेश नगरपालिका अधिनियम 1961 की धारा 127(6)(ढ) के अंतर्गत नगरीय निकायों को प्राप्त अधिकार के अनुसार यदि वे निर्यात कर लगाना चाहती है तो शासन को कोई आपत्ति नहीं है।

मध्यप्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार
सही/ (सुदेश कुमार)
अपर सचिव
मध्यप्रदेश शासन सामान्य प्रशासन विभाग

कार्यालय संभागीय उपसंचालक, नगर प्रशासन, रायपुर

कमांक 2051/नि0क0/न0प्रा0/विविध/97, रायपुर,दिनांक 10–11–97

प्रतिलिपिः–

(1) समस्त मुख्य नगरपालिका अधिकारी, नगरपालिका/नगर पंचायत, रायपुर एवं बस्तर संभाग को सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित।

सही/अस्पष्ट
संभागीय उप संचालक,
नगर प्रशासन, रायपुर"

State Government vide above letter only issued no objection for imposition of terminal tax. It cannot be inferred from the letter that

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Municipalities have power and jurisdiction to enhance the rate of export tax, ignoring rules and directions applicable to them.

11) State Government for export tax leviable by Municipalities has from time to time made rules, issued directions applicable to all the Municipalities and even made rules, issued notifications applicable to particular Municipalities, therefore, to appreciate the impugned resolution of respondent No.2, it is necessary to elicit whether the rate enhanced by respondent No.2 is in any way against the intent of State Government. The notification dated 12-4-1991 whereby State Government for respondent No.2 approved rates of export tax at a rate of Rs.1.00 per quintal for paddy and Rs.1.50 per quintal for rice. The rates approved therein were not the part and partial of Rules, 1989 that was in force from 12-4-1991, therefore, the rates approved were not superseded or repealed expressly or impliedly by the Rules, 1989. Rules, 1991 that was notified on 8-1-1992 repealed earlier rules as such Rules, 1989 has been repealed by Rules, 1991 and Rules, 1991 has been repealed by Rules, 1996, therefore, so far as tax to be levied on paddy and rice is concerned, particular notification fixing rates for Gobra Nawapara Municipality, have not so far been repealed or superseded.

12) Although for all the Municipalities a general law by Rules, 1996 appending schedule thereto for prescribing maximum rate of tax has been led by the State, Rules, 1996 neither expressly nor impliedly repeals the rate fixed by the State Government for Gobra Nawapara Municipality in accordance with notification dated 12-4-1991. General Rules, 1996 applies to all the Municipalities and the rates approved and notified by State for Gobra Nawapara Municipality vide notification dated 12-4-1991 in its operation is confine to Gobra Nawapara Municipality alone, that being a special rule has not been repealed by any of the general rules,

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therefore, only because of obligation of Rules, 1996, the notification dated 12-4-1991 prescribing and notifying rate for Gobra Nawapara Municipality cannot be ignored or dispelled.

13) Vide circular dated 15-12-1995 (Annexure-P/2) tax for all sorts of food grains, pulses, oil seeds, sugar, gur (Jaggery) was prescribed 2.10% on the basis of price and for all other sorts of agricultural products, bhusi, chuni and food grains for cattle feed 0.10% on the basis of price was prescribed, but in Rules, 1996 schedule appended thereto for both these items although shown separately, but rate prescribed is 0.10% on the basis of price. Apparently it appears that rice, pulses, sugar cannot be equated with bhusi, chuni even earlier also rate of tax was kept different, therefore, it appears that there is some error in the schedule and to remove it State did not took any efforts till now and that is being the reason for agitation.

14) According to special notification dated 12-4-1991 the State Government has fixed terminal tax at a rate of Rs.1.50 per quintal for rice and Rs.1.00 per quintal for paddy and the said rate has not been repealed so far, therefore, Gobra Nawapara Municipality for enhancement of the rate up to that limit can still take shelter of it. By impugned resolution they have enhanced the rate up to that limit, therefore, in the instant case so far as enhancement is concerned, that does not violate Section 129 of the Act, 1961. Even otherwise, petitioners could not succeed to demonstrate how the enhanced rate is beyond the ceiling limit. On rice only Rs.1.50 per quintal has been levied by enhancement in place of 0.80 paisa whereas according to schedule maximum prescribed rate is 0.10% on the basis of price. For paddy, enhanced rate is Rs.1.00 in place of 0.55 paisa and maximum ceiling is 0.10% on the basis of price. How enhanced rate exceeds the maximum limit was required to be demonstrated by exposing

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the rates of paddy and rice prevalent in 1999, but that has not been demonstrated.

15) Further contention of learned counsel for the petitioners was that respondent No.2 has erected barriers and at barrier point respondent No.2 is coercively realizing the terminal tax, which is not permissible in accordance with Rule 4 of the Rules, 1996. On the other hand, though learned counsel for the Municipalities did not assail the said contention of erecting barriers and realizing terminal tax, yet objected that any coercive method is being applied for recovery of the tax.

16) Rule 4 of the Rules, 1996 is reproduced below :

> "4. The person, businessman, establishment or licence holder, as mentioned in Rule-3 shall deposit in the Municipal Treasury the amount of terminal tax collected during the last month on the goods exported from the Municipal limits, through their shop establishment along with the return up to 10th day of every month."

17) Earlier when the Rules, 1989 was in force the mode of recovery of terminal tax by realizing the tax at barrier point was provided, but Rule 3 of the Rules, 1991 repealed the said provision and again by Rule 8 of the Rules, 1991 similar procedure for recovery of export tax at terminal point has been provided. Rule 9 of the Rules 1996 repealed the Rules, 1991, therefore, the system of recovery of terminal tax at barrier point wiped out from the statute and Rule 4 of the Rules, 1996 took its place and by virtue of Rule 4 of the Rules, 1996 terminal tax cannot be realized at barrier/ terminal point. The law does not direct removal of barriers, but only changed the mode of recovery of export tax, therefore, although recovery of terminal tax at barrier point is illegal yet barriers erected by Municipalities cannot be held to be unauthorized.

18) In the result, the petition is partly allowed, enhancement of rate of terminal tax on commodities i.e. paddy and rice by respondent No.2 vide

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its resolution dated 9-6-1999 is held to be valid. So far as collection of terminal tax at barrier is concerned, respondent No.2 is directed not to collect the terminal tax on export of paddy and rice from the Municipal limits at Municipal barrier, but shall collect the same in accordance with Rule 4 of the Rules, 1996 until otherwise directed in accordance with law by the competent authority. No costs.

Sd/-
V.K. Shrivatava
Judge

Gowri